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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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<div>466 7590 07/01/2010</div> <div>YOUNG & THOMPSON</div> <div>209 Madison Street</div> <div>Suite 500</div> <div>Alexandria, VA 22314</div>				
EXAMINER				
PANI, JOHN				
ART UNIT		PAPER NUMBER		
3736				
NOTIFICATION DATE		DELIVERY MODE		
07/01/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary**Application No.**

10/579,240

Applicant(s)

RICHARD VITTON, THOMAS

Examiner

JOHN PANI

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6, 7, 9, 11-20 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 9, 11-20 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/18/2010 has been entered.

Claim Objections

2. Claim 1 is objected to because of the following informalities: In line 34 it is suggested to replace "second arc" with --secondary arc--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 9, 11-20, and 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 14-18 require "a second axis of rotation entirely in front of said primary arc with respect to a person seated in the examination chair, said second axis of rotation is substantially perpendicular to the first axis of rotation and passes through a first end and a second end of said primary arc" [emphasis added]. It is unclear from the disclosure what is meant by an axis of rotation located "entirely in front of said primary arc" that also "passes through a first end and a second end of said primary arc". These two limitations directly contradict each other, and it is thus unclear what the scope of the claim is, thereby rendering claim 1 and dependent claims 9, 11-20, and 23-25 indefinite. Note that for purposes of examination with respect to the prior art, the limitation has been interpreted to require that the "second axis" passes through a first end and a second end of the primary arc.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 9, 11-20, and 23-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1, lines 14-18 require "a second axis of rotation entirely in front of said primary arc with respect to a person seated in the examination chair, said second axis of rotation is substantially

perpendicular to the first axis of rotation and passes through a first end and a second end of said primary arc" [emphasis added]. The original disclosure does not appear to support this combination of limitations, as the specification does not detail such a combination, and the drawings depict the "second axis of rotation" as passing through both the primary and secondary arcs. Claims 9, 11-20, and 23-25 lack support by virtue of depending from claim 1.

7. Claim 1, lines 33-37 require "said first and second mechanical abutments being configured for performing adjustable stopping of the primary arc and second arc respectively, at a plurality of predetermined locations relative to said single rear stationary column and said primary arc respectively". However, the original disclosure does not appear to support that the first and second mechanical abutments are adjustable in a manner that allows adjustable stopping of the primary and second arc at a plurality of predetermined positions. Rather, it appears that first and second locking means fulfill this function (see, e.g. pg. 10 line 14 - pg. 11 line 4, which differentiates between the braking means/abutment and the locking means).

8. Claims 1, 9, 11-20, and 23-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1, lines 14-18 require "a second axis of rotation entirely in front of said primary arc with respect to a person seated in the examination chair, said second axis of rotation is substantially perpendicular to the first axis of rotation and

passes through a first end and a second end of said primary arc" [emphasis added].

The emphasized limitations directly contradict each other, and as they are not physically compatible, the specification does not disclose how one of ordinary skill in the art would make a device in which an axis both passes through an object while being entirely in front of the same object.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 1, 9, 11, 12, 18 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,402,500 to Coles ("Coles").

11. Coles discloses:

In reference to Claim 1

A medical examination chair (10) for seating and moving a patient in three substantially perpendicular planes over a large amplitude (note that the term "medical examination" has been interpreted as a statement of intended use, and that the device of Coles could be used for medical examination) said medical examination chair comprising: a floor stand (11, 14); a single rear stationary column (12; note that 12 could be interpreted as rear if one were to consider 13 the front of the device, and it is the only support column in this position) on the floor stand; an open access primary arc

(15) connected to said stationary column; a horizontal shaft (16) between said primary arc and said single rear stationary column, said horizontal shaft constitutes a first axis of rotation of the primary arc about said single rear stationary column; a second axis of rotation (axis through 31, e.g.) entirely in front of said primary arc with respect to a person seated in the examination chair (note that because 23 can rotate, depending on use this axis is in front of at least part of 15, such as when 23 rotates such that the chair faces 13), said second axis of rotation is substantially perpendicular to the first axis of rotation and passes through a first end (bottom of 15) and a second end (top of 15) of said primary arc; an open access secondary arc (one of 25, 26, 27, etc.) that is in front of said primary arc and that includes a seat (33) thereon, said secondary arc is arranged inside said primary arc (Fig. 1), said secondary arc is secured via a third end and a fourth end to said first end and said second end (see Figs 3 and 8), respectively via an upper shaft (31) and a bottom shaft (32), said primary arc and secondary arc being configured for performing non-motorized rotary movement about said first axis of rotation and said second axis of rotation respectively (see col. 3 lines 1-15); and a brake (48 and 45; 40 and 38) that suddenly stops said non-motorized rotary movement (col. 4 lines 26-55), said brake including at least a first mechanical abutment (38 and 37) that suddenly stops said primary arc relative to said single rear stationary column and a second mechanical abutment (48 and 45) for suddenly stopping said secondary arc relative to said primary arc, said first and second mechanical abutments being configured for performing adjustable stopping of the primary arc and secondary arc respectively, at a plurality of predetermined locations relative to said single rear

stationary column and said primary arc respectively (depending on when the brake is applied).

In reference to Claim 9

The medical examination chair of claim 1 (see above) wherein the first mechanical abutment (38, 40) is on one lateral side of said stationary column and provided with a ring (38) and a damper (40 could act as a shock absorber), said ring cooperating with a tooth (37) of catch means arranged on the primary arc (see Fig. 7).

In reference to Claim 11

The medical examination chair of claim 1 (see above) wherein said second mechanical abutment has at least one hook (48) and at least one damper (see pads on 48) arranged on the first end of the primary arc, said hook co-operating with stop means (45) disposed on the third end of the secondary arc.

In reference to Claim 12

The medical examination chair according to claim 11 (see above) wherein said stop means is retractable (via 46).

In reference to Claim 18

The medical examination chair of claim 1 (see above) including patient restraining means (see Fig. 1, includes a seat belt).

In reference to Claim 25

The medical examination chair according to claim 1 (see above) wherein said primary arc includes a convex portion and is connected to said horizontal shaft via a middle of the convex portion (see Fig. 1).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 1 above, and further in view of US Pat. No. 3,774,963 to Lowe ("Lowe").

Coles teaches the device of claim 1 (see above) but does not explicitly teach that the seat position can be adjusted along the second axis of rotation. Lowe teaches a vehicle seat in which the seat height can be adjusted to allow the seat to conform to various users (col. 3-4). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by making the seat height adjustable so the device could conform to multiple users as taught by Lowe.

14. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 1 above, and further in view of US Pat. No. 3,343,875 to Ferrara ("Ferrara").

Coles teaches the device of claim 1 (see above) but does not explicitly teach that the seat back is adjustable in translation along said second axis of rotation. Ferrara teaches a vehicle seat in which the seat back can be adjusted in a vertical direction to allow it to conform to multiple users (col. 2-3). It would have been obvious to one

having ordinary skill in the art at the time of the invention to have modified the device of Coles by making the seat back height adjustable so the device could be used by people of various sizes as taught by Ferrara.

15. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 1 above, and further in view of US Pat. No. 6,264,278 to Weimer et al. ("Weimer").

Coles teaches the device of claim 1 but does not explicitly teach an adjustable foot rest. Weimer teaches a vehicle seat with a foot rest that is adjustable in height and angle (col. 3-4) so the device can be comfortably used by people of varying sizes. The foot rest increases circulation to the feet compared to letting the feet dangle. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by including an footrest adjustable in height and angle so the user would have increased circulation compared with unsupported feet, and so the device could be conformed to various sized users as taught by Weimer.

16. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles as applied to claim 1 above, and further in view of US Pat. No. 5,052,754 to Chinomi ("Chinomi").

Coles teaches the device of claim 1 (see above) but does not teach a headrest that is tiltable and adjustable in translation along said first and second axes of rotation. Chinomi teaches a vehicle head rest in which the device is tiltable and adjustable in

translation vertically and horizontally (see Figs. 1-9 and col. 2-5) for increased comfort. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by including a headrest that was tiltable and adjustable in translation vertically and horizontally in order to increase user comfort as taught by Chinomi.

17. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,800,062 to Epley ("Epley") in view of Coles as applied to claim 1 above.

Epley teaches a medical examination chair (see Figs. 2-3 and at least col. 10 lines 9-30) which is rotatable about a horizontal axis and vertical axis. Epley does not explicitly detail the structure of the chair portion but notes that other designs which can allow rotation of the user about axes could be used. Coles teaches the device of claim 1 (see above). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the medical examination chair of Epley by making it with the arcs and columns in a configuration such as that taught by Coles, as this simple substitution of one device design for another would predictably result in orienting a user about multiple axes as taught by both Epley and Coles. Epley teaches a control and management member (20).

18. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles in view of US Pat. No. 5,046,721 to Altare ("Altare").

In reference to Claim 19

Coles discloses the device of claim 1 (see above) but does not explicitly disclose a first lock that locks the primary arc relative to the stationary column. Altare discloses a gyroscope which includes a first lock (85) which locks the primary arc (13) relative to a stationary column (30) so that the arcs do not move during loading, etc. (see col. 4 lines 38-54). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles by including a lock to lock the primary arc to the column in order to prevent unwanted relative motion during loading, etc. as disclosed by Altare.

In reference to Claim 20

Coles discloses the device of claim 1 (see above) but does not explicitly disclose a second lock that locks the secondary arc in a plurality of positions relative to the primary arc. Altare discloses a gyroscope which includes a second lock (200) that locks the secondary arc (180) in a plurality of positions (note 210 and 212) relative to the primary arc to assist in a user getting in and out of the device (see col. 6 lines 18-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles by including a similar locking mechanism in order to increase safety during a user getting in and out of the device as taught by Coles.

Response to Arguments

19. Applicant's arguments filed 5/18/2010 have been fully considered but they are not persuasive. In response to Applicant's various assertions that the "amusement

apparatuses" applied as art could not be used as a medical examination chair, the Examiner respectfully disagrees, as Applicant provides mere conjecture in support of this position. Medical diagnostics can still be performed on individuals capable of climbing into a chair (i.e. a chair for medical diagnostics need not allow a disabled patient to easily climb into the chair). Furthermore, medical examination is a broad enough term to encompass a variety of activities. For example, there is no evidence provided that one could not put a person in one of the so called "amusement apparatuses", spin them, and monitor eye motion. The "ease", etc. with which this is conducted is irrelevant to the current claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "configured for installation in a medical cabinet or hospital room", "wide opening at the front access area, relatively small floor stand allowing wheel chair proximity for patient transfer", "compact (not bulky) and can easily be disposed inside a medical cabinet", etc.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to Applicant's arguments that the cage structures make "access to the seat 30...impossible e.g. for a disabled, obese or harmed person" is not persuasive, as the claims do not require access for such people, and because this alleged "impossibility" is mere conjecture unsupported by evidence.

20. In response to Applicant's assertions that Coles does not disclose "open access" the Examiner respectfully disagrees, as this term is not specifically defined in the

original disclosure, and has been interpreted broadly to include a device which has openings for access which Coles clearly does. In response to Applicant's assertions that Coles does not disclose "a second axis of rotation entirely in front of the single rear stationary column", the Examiner first notes that this is not claimed, but further disagrees, as when interpreting column 12 as the "single rear stationary column", the axis through 32/32 is clearly in front of 12 if 13 is interpreted as "in front of" 12. Furthermore, Coles discloses "adjustable stopping" of the chair at a "plurality of predetermined positions" in the sense that the brakes are such that they can be applied at any time, and these times could be "predetermined" by the person applying the brakes.

21. In response to Applicant's arguments that Epley does not disclose various claimed features, the Examiner notes that Coles, not Epley is relied upon for these teachings.

22. Applicant's remaining arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

23. In response to Applicant's assertion that the "the discussion during the interview" states that the amendments would "place it in condition for allowance at the time of the next Official Action", the Examiner respectfully submits that no such agreement was made, and that rather the Examiner suggested that the proposed amendments appeared to overcome the outstanding rejections over the prior art and would require further search and consideration.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PANI whose telephone number is (571)270-1996. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JP/ 6/28/10

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736

